

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTH REGION**

**HCR MANOR CARE CORPORATION d/b/a  
HEARTLAND HEALTHCARE OF WHITEHALL<sup>1[1]</sup>**

**Employer**

**and**

**Case GR-7-RC-22957**

**GENERAL TEAMSTERS UNION LOCAL 406,  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

**Petitioner**

**APPEARANCES:**

Steve Schuster, Attorney, of Kansas City, Missouri, for the Employer  
Filipe S. Iorio, Attorney, of Grand Rapids, Michigan, for the Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>2[2]</sup> the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

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<sup>1[1]</sup> The Employer's counsel stated at the hearing that the correct name of the Employer is Heartland Health Care of Whitehall. However, there was no stipulation as to the Employer's correct name. In its post-hearing brief, the Employer identified the name of the Employer as HCR Manor Care Corporation, d/b/a Heartland HealthCare of Whitehall.

<sup>2[2]</sup> The Employer and Petitioner filed briefs which have been carefully considered.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

## **Introduction**

The Petitioner seeks to represent a single unit of approximately 88 employees, including nurse aides (CNAs), housekeeping aides, laundry aides, dietary aides, staffing and scheduling coordinators, cooks, maintenance employees, activity assistants, medical records clerks, central supply clerks, general clerks, administrative assistants, and assistant food service director, employed by the Employer at its facility located in Whitehall, Michigan, but excluding all licensed practical nurses (LPNs), registered nurses (RNs), and guards and supervisors as defined in the Act. The Employer contends that the unit must include a second facility, Knollview, located in Muskegon, Michigan because the two facilities have common workplace policies, vendors, application procedures, resident and employee pools, and regional management. The Employer further contends that the assistant food service director at Whitehall is a supervisor under Section 2(11) of the Act and not appropriately part of the unit.

I conclude that the Employer has not rebutted the Board's single-facility presumption and the unit, as set forth by the Petitioner, is appropriate as the Whitehall facility enjoys considerable local autonomy with limited interchange of employees between Whitehall and Knollview. Further, I conclude that the unit properly includes the assistant food service director since the Employer has not met its burden in establishing that the assistant food service director is a statutory supervisor.

## **Overview**

HCR Manor Care Corporation (HCR) owns and operates the Whitehall and Knollview facilities. In all, HCR operates approximately 295 homes throughout the United States.<sup>3[3]</sup> The homes offer long and short-term skilled nursing and rehabilitative care for residents. HCR has established six divisions, one of which is the Midwest Division. That division is comprised of facilities in Indiana, Wisconsin, North Dakota, South Dakota, Iowa, and Michigan, and has seven regions. Region 3 consists of seven facilities, including Whitehall and Knollview.<sup>4[4]</sup>

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<sup>3[3]</sup> The Employer's handbook states that there are 500 facilities; however HCR's regional director of operations for the Midwest region testified that there are 295 facilities.

<sup>4[4]</sup> The other facilities are: Heartland Healthcare of Jackson, Heartland Healthcare of Battle Creek, Heartland Healthcare of Kalamazoo, Heartland Healthcare of Three Rivers, and Heartland Healthcare of Holland.

Whitehall is located in the city of Whitehall, Michigan. Knollview is in Muskegon, Michigan. The two facilities are approximately 20 miles apart. The next closest HCR facilities to Whitehall are Greenview in Grand Rapids, Michigan, about 50 minutes away, and Holland in Holland, Michigan, about 45 to 50 minutes away. Whitehall has 125 licensed beds. Knollview has 107 licensed beds. On average, residents stay at Whitehall and Knollview around 10 months. There are 88 employees in the proposed Whitehall unit. Knollview has 70 employees in the same or similar classifications.

### **Whitehall Facility**

The 88 employees in the proposed unit include: an administrative assistant/staffing and scheduling coordinator, a medical records clerk, a central supply clerk, a general clerk, 54 CNAs, 2 activity assistants, 8 housekeeping aides, 3 laundry aides, 4 cooks, 11 dietary aides, a maintenance employee, and an assistant food service director.

Al Irby is the interim administrator at Whitehall. Reporting to him is Phillip Bennett, assistant administrator, and various directors and supervisors. HCR tracks the separate financial records and budgets for each of its nursing facilities. Irby maintains the budget for the facility at Whitehall. The general clerk reports to and is evaluated directly by Irby. She is responsible for the payroll functions for the Whitehall facility only. Whitehall keeps the payroll records for its employees on site. The general clerk at Whitehall does not maintain payroll records for any other facility.

### ***Personnel Policies and Procedures***

Whitehall's Human Resources Director, Dorothy Bowne, is responsible for hiring employees at the Whitehall facility and does not hire for any other facilities. The nursing, dietary, housekeeping, and laundry department managers or supervisors at Whitehall conduct interviews of prospective employees at Whitehall.

Prospective employees obtain applications at Whitehall and fill them out on site. Someone who interviews for a support staff position at Whitehall interviews with management and supervisors at the Whitehall facility. No prior approval is given by the regional administration to hiring a support staff employee at Whitehall unless there is an issue with a criminal background or a policy question.

Regional managers "possibly" might attend interviews for hiring cooks; however, they do not sit in interviews to hire dietary aides, laundry employees, or housekeepers. Regional managers do not have to have input as to whether any particular employee in the proposed unit is hired at Whitehall.

Department directors at Whitehall have the authority to discipline and terminate employees. They can discharge an employee on the spot without contacting the region if the safety of a resident is involved. Otherwise, the facility's human resources director consults regional management prior to or immediately after administering terminations or serious disciplines or suspensions of employees to ensure that the Employer's progressive discipline policy is properly followed. However, for matters such as minor attendance violations, it is not necessary for Whitehall supervision or management to contact the region. Facility management is expected to make recommendations and provide support for employee terminations. Regional management relies heavily on department directors to present the case for terminating an employee. While the regional human resources manager and regional director of operations can decide that no discipline or different discipline than recommended by the facility is appropriate, there are no specific examples in the record of such regional reversals of facility managers' decisions.

Whitehall directors or department heads meet with employees regarding discipline. Regional managers are not present. The director or department head informs the employees of the discipline, explains the basis for it, and presents the discipline notice to the employees.

Each department at Whitehall is responsible for evaluating its own employees. The supervisors assign employees a performance or merit score. The employees' annual increase in salary at the beginning of the year is based on those merit scores. Discussions with employees regarding their pay increases are conducted by the department manager, not by regional staff.

There is a time clock at Whitehall. All employees punch the time clock. According to the Employer's handbook, each facility also maintains its own dress codes.

### ***Nursing Department***

Both the Whitehall administrative director of nursing services, Patricia Quinn, and assistant director of nursing, Cindy McDonald, have offices at the Whitehall facility. They are responsible for hiring employees in the department. A nurse supervisor reports to McDonald.

The administrative assistant and staffing and scheduling coordinator has responsibilities as a receptionist and for scheduling nursing department employees. She reports to the administrator regarding her receptionist work, and to the administrative director of nursing services with regard to scheduling staff in the nursing department. She is jointly evaluated by both managers. Her scheduling duties include identifying absent staff, and putting out daily staffing sheets on the floor. She schedules employees at the Whitehall facility only, and does not perform any work for the Knollview facility.

Current Whitehall residents' medical records are kept at Whitehall and maintained by the medical records clerk on site at Whitehall.

### ***Laundry and Housekeeping Department***

The laundry and housekeeping supervisor, Melissa Cavanaugh, is responsible for the laundry and housekeeping department. She has authority to hire and discipline housekeeping and laundry employees solely for the Whitehall facility. Her office is in Whitehall. Cavanaugh makes purchases for the laundry department at Whitehall only, and the records for purchasing for laundry are kept at Whitehall.

### ***Activity Department***

The two activity assistants report to Activity Director Tim Vandyke. Vandyke has the authority to hire, evaluate, and discipline activity assistants. He has an office at Whitehall. The activity assistants program daily activities for Whitehall's residents, including bowling, cooking, current events, bingo, and games.

### ***Maintenance Department***

The director of maintenance position at Whitehall is currently vacant. The prior director of maintenance hired maintenance assistants, also referred to as floor care employees, at Whitehall only.

### ***Food Service Department***

Whitehall's food service director, Anita Rademaker, is in charge of dietary staff, including cooks, dietary aides, and the registered dietician who formulates appropriate meals for dialysis patients, tube feeding patients, and all other residents. Rademaker has an office at Whitehall and hires all food service department employees. She does not participate in hiring of dietary staff at any facilities other than Whitehall. When Rademaker is on night management or working on weekends, she is also responsible for the CNAs.

Rademaker and the assistant food service director order food for Whitehall only. There is no central supply depot location. The kitchen located at Whitehall prepares food only for the residents at Whitehall.

There are many different shifts for dietary aides and cooks. The facility is staffed with dietary aides from 6:30 a.m. until 9 p.m. Cooks are scheduled between 5 a.m., and 7:30 p.m.

## **Collective Bargaining History**

The record indicates that the Service Employees International Union (SEIU) represented an unspecified unit of employees at Whitehall and was decertified some years ago. There is no evidence that Knollview employees have ever been represented by a union.

### **Interchange and Contact**

HCR has permanent and temporary transfer policies. The permanent transfer policy provides that a transfer can occur only upon acceptance by the location to which the employee wishes to be transferred. It is up to the facility's department heads and human resources manager as to whether an employee is needed.

The record discloses six or seven permanent transfers between Whitehall and Knollview in the past seven to eight years. Only two involved employees in the proposed unit. CNA Linda Helms transferred from Whitehall to Knollview more than seven years ago and remained a CNA. Another CNA, Jonnel Matthews, transferred from Knollview to Whitehall three years ago and seeks to return to Knollview. However, there has been no opening.

In the case of temporary transfers, the personnel records are maintained at the home location and the payroll is generated from the home location. Two Whitehall employees in the proposed unit have performed some work at, and were temporarily transferred to, Knollview since 2004. Documents generated by HCR indicate that CNAs E. Royce and S. Harris were paid on May 31, 2005 for work performed at Knollview. It is unclear how much time Royce and Harris spent working at Knollview or when they worked there. There is no evidence in the record regarding any temporary transfer of employees from Knollview to Whitehall.

Whitehall's activity director, Tim Vandyke, provided some assistance to Knollview one or two days a week for about six weeks in the past year or two. During a vacancy in Knollview's dietitian position in 2005, the registered dietitian from Whitehall worked at Knollview for three or four days. On separate occasions in 2004 and 2005, an LPN from Whitehall was paid for an unspecified amount of work performed at Knollview. Recently, Knollview provided Whitehall with some LPNs and/or RNs, but not CNAs, to work three shifts over a weekend. This temporary transfer was triggered by a need at Whitehall. At times, the maintenance directors at Whitehall and Knollview cover for each other if one of them is on vacation or out of town for a week.

Two years ago, when Whitehall was subject to an internal "intensive intervention" prompted by an unspecified survey by the Michigan Department of Consumer and Industry Services, staff from Knollview worked at Whitehall during a three to four week period. Knollview staff, including RNs, LPNs, 8 to 10 CNAs, 4

housekeepers, and 2 laundry employees, worked a few shifts during this period at Whitehall to support the facility.

Employees from Whitehall and Knollview do not attend the other facility's Christmas parties or summer picnics.

### **Regional Oversight, and Common Policies and Cooperation between Whitehall and Knollview**

The administrators at all seven Region 3 facilities report to the regional director of operations for Region 3, Anthony Abela. Abela and other regional managers are scattered and do not maintain offices at any facility. They all work out of their homes. For example, Regional Human Resources Manager Mark Azar's home is located about 220 miles from Whitehall and Knollview. Azar has visited Knollview 10-15 times and Whitehall 7-10 times during his 15 months of employment. The various regional managers generally have oversight responsibilities for most, if not all, Region 3 facilities. When regional managers visit facilities, they engage in one-on-one conversations and small group discussions.

Employees have contact with the regional offices through a "Care Line" available at the facility. According to the Employer's handbook, the Care Line is available for employees to discuss problems and concerns during weekdays from 8 a.m. to 4:45 p.m., and accepts messages at other times. The number for the Care Line is posted in the break room or the main hall. No calls to the Care Line were made from Whitehall in the month before the hearing.

Whitehall and Knollview cooperate through efforts to recruit and retain residents. Ninety percent of admissions for Whitehall and Knollview come from two Muskegon hospitals, Hackley and Mercy. Those hospitals do not feed into any other HCR facilities. Residents have been moved from Whitehall to Knollview and vice versa. There have been resident transfers to and from other HCR facilities as well. The record does not indicate how frequently or how many resident transfers have occurred.

The regional admissions director and the marketing director provide some marketing services to Whitehall and Knollview. They operate in conjunction with staff from Whitehall and Knollview because of the proximity of the facilities and because they draw residents from similar referral sources. Other HCR facilities may also participate.

With regard to employee recruitment, since employees at Whitehall and Knollview come from similar geographic areas, there is cooperation with regard to job fairs, especially for nurses. Job fairs take place at Muskegon Community College and Michigan Works, and have included recruitment for CNAs. The job fairs are generally staffed by the human resources managers of the two facilities, who may be accompanied

by an assistant director of nursing. Sometimes, the regional human resources manager attends. At the job fair table or booth, representatives from both Whitehall and Knollview may sit together. There is sometimes a sharing of job applications. If Whitehall is fully staffed and there are too many applications for nurses, the applications are passed on to Knollview.

All HCR facilities use the same employment applications and job classifications. However, there are some circumstances when a job description or job classification is unique to Whitehall or Knollview. For example, the Knollview facility has an assistant administrator position while Whitehall does not. With the exception of forms specific to each state, all HCR facilities use the same application consent forms with regard to alcohol and drug testing, criminal history check, state residency acknowledgement, authorization to conduct reference check, personal references, invitation to self-identify for EEO reporting purposes, and affirmative action policies. In addition, applicants must fill out a Form 8850 which has to do with a work opportunity and welfare to work credits.

Heartland Rehab is affiliated with HCR and provides rehabilitation services for residents at all HCR nursing homes, including Whitehall and Knollview. Similarly, Heartland Pharmacy provides pharmacy services to all facilities affiliated with HCR, including Whitehall and Knollview. Heartland Hospice is also affiliated with HCR. The hospice provides care to Whitehall and Knollview, as well as to all other HCR facilities. Muskegon Oceana Hospice also provides services to both Whitehall and Knollview. This care is arranged through the social worker at the facility where the resident resides.

The Whitehall and Knollview facilities use the same vendors for medical supplies, equipment, and service, lawn care, food, and ambulance and transportation services. McKesson Medical Line provides both facilities with general nursing supplies, including dressings, treatments, briefs, and soap. The Whitehall and Knollview central supply clerks and the directors of nursing order these products for their respective facilities, but not for each other. There is apparently a three-way purchasing contract between McKesson, Whitehall and Knollview. Similarly, the central supply clerk at each facility places separate orders with Airway Oxygen for tube feeding supplies, dressing supplies, concentrators, bed rental equipment, and nasal cannulas. These supplies and equipment are provided and serviced pursuant to the same contract for both facilities. Mobile X-Ray provides x-ray and dental services to both Whitehall and Knollview under one Mobile X-Ray contract.

Prime Seasons Lawn Care services both facilities. The food vendor Sysco provides food vending services to both Whitehall and Knollview. Food orders are placed by a dietary manager at each facility and the orders are delivered directly to the two facilities for their respective use. Separate records of orders and purchases are maintained at Whitehall and Knollview.



Two companies provide transport services to Whitehall and Knollview: ProMed and Ambu Care. ProMed is the ambulance service and Ambu Care provides wheelchair transportation. Both ProMed and Ambu Care provide these services through separate contracts with each facility.

## **Benefits**

All support and service staff working at facilities under the rubric of HCR receive the same benefit packages if they work full-time, or 30 or more hours per week. The benefit packages include health and dental insurance, life insurance, a flexible spending account benefit, 401(k), and vacation, holidays, and sick/personal days. There is a guide to benefits that outlines available benefits provided to employees at all HCR facilities.

HCR maintains a new hire pay chart identifying what starting rates should be, based on an applicant's years of experience. One such chart applies to Whitehall, Knollview, and an HCR facility in Holland. There is some flexibility as to assessing how many years of experience an applicant has and an applicant can contact the facility's human resources manager if he or she wants to discuss it. Regional human resources people get involved only if there is an unresolved question relative to previous years of experience. HCR uses two, two-week pay period cycles, designated as O and W. Whitehall and Knollview are in the O cycle, as are other HCR facilities.

## **Assistant Food Service Director**

The Employer contends Whitehall's assistant food service director, Cindy Ogden, is a statutory supervisor. Ogden reports to Whitehall's food service director, Anita Rademaker. Ogden is the only individual with the title of assistant food service director at Whitehall. She has been the assistant food service director for 10 or 11 of her 12 years of employment.

Rademaker works Tuesday through Friday and some weekends. The record is not entirely clear as to Ogden's schedule. It appears that during a two-week period, she works Monday through Friday one week, one weekend, and three other days. When she works weekends, it appears that Ogden has Thursdays and Fridays off. Rademaker has four weeks of vacation and is rarely absent due to illness.

Ogden is an hourly employee who punches the time clock. A list of wage rates and classifications for employees placed in the record does not include the classification

of assistant food service director. Rademaker testified that Ogden's wage rate was listed as a cook at \$14.34 per hour. Ogden did not testify. Employees in the proposed unit earn between \$9.53 and \$15.80 per hour.

Ogden works two to three days a week as a dietary aide. In that capacity, she provides milk and juices to the residents, and obtains extra items that residents request that are not on the menu. She makes snacks, works on the line, washes and put away dishes. She takes food out to the residents either in the dining room or on a cart to residents' rooms. The record does not specify what Ogden does during the other 50% of her work time.

Ogden occasionally participates with interviewing applicants for employment and has sat in on second interviews. She has asked applicants questions. Even when Ogden does not sit in on the interview, Rademaker sometimes consults with her for her thoughts, ideas and recommendations as to whether an individual should be hired. Once the interviews are over, Rademaker and Ogden let Whitehall's human resources department know that they want to hire someone. The human resources manager calls individuals to offer them employment. If she is not available to make the call, Rademaker calls the applicant; Ogden does not call.

With regard to discipline, if Rademaker is not present and an employee does something wrong, Ogden may speak to the individual, write a note about the incident on a piece of paper, and put it on Rademaker's desk for the next day. Rademaker and Ogden then talk about the incident together. It appears that Rademaker alone signs any discipline.<sup>5[5]</sup> Cooks also are responsible for jotting down notes for Rademaker if a disciplinary issue arises and neither Rademaker nor Ogden are present. Ogden has never suspended anyone. Rademaker has overruled Ogden's recommendations with regard to discipline. Ogden has served as a witness for Rademaker when Rademaker meets with someone to advise them that they are terminated. The termination letter is signed by the facility's human resources manager.

Ogden participates in assigning employees to tasks to the extent that she discusses with Rademaker who would be the best person to perform a particular task. Ogden makes suggestions, and Rademaker considers Ogden's recommendations. Ogden makes sure that employees are doing the work that they are supposed to be doing. If they are not doing it, she corrects them verbally, and tells Rademaker what happened. Rademaker states that she acts on Ogden's recommendation.

Ogden also advises dietary aides and cooks of menu substitutions if a planned meal is not possible. If Ogden is not there, the cooks make those decisions and give such

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<sup>5[5]</sup> Rademaker initially testified that Ogden signed disciplines. Then, on cross-examination, she stated that Ogden did not sign disciplines. No disciplines with Ogden's signature were received into the record.

direction. Ogden also reassigns tasks for dietary aides when something else needs to be done. Ogden trains new employees how to perform certain tasks and functions, as do almost all other employees at Whitehall.

Ogden doesn't sign evaluations of dietary aides or cooks. She assertedly conducts performance appraisals when Rademaker is on vacation. However, there were no specifics given and no indication as to how often that has occurred, when, or whether Rademaker reviews the application upon her return. There also are no appraisals by Ogden in the record. Rademaker schedules dietary employees. It does not appear that Ogden schedules employees.

Rademaker testified that Ogden can authorize employees to perform overtime; however, there are no specifics in the record regarding this authorization. Moreover, there is very little overtime. With regard to overtime, the HCR handbook states that "[o]ccasionally a supervisor may request, but not require, an employee to work overtime in order to cover vacant shifts, vacant positions or to accomplish additional tasks."

Ogden attends management level meetings only when Rademaker is not there. Ogden does not attend any other meetings where supervisors or managers are in attendance. The record contains no indication how often management meetings are held, how often Ogden has attended, or whether there is any formulation of personnel or work policies at these meetings.

Ogden assertedly can grant time off to employees if Rademaker is not there, although, again, no specific examples were presented in the record. Otherwise, Ogden calls Rademaker to ask if employees can have time off. It is up to the cooks to replace employees who call off work.

Rademaker considers Ogden to be a department supervisor. Rademaker evaluates Ogden on her work with regard to "supervisory" responsibilities. Rademaker may consult the registered dietician in the evaluation. Rademaker and the facility administrator sign the evaluation. Ogden wears a name badge with her identity as the assistant food service director on it. Since Ogden works in the kitchen more closely with other employees than Rademaker, Rademaker listens to Ogden's feedback on employment issues. Since Ogden is more accessible, employees assertedly come to her with problems or concerns.

## **Analysis**

### ***The Appropriateness of Whitehall as a Single Facility Bargaining Unit***

It is well settled that in reviewing a bargaining unit, the Board does not require the most appropriate unit, but only that the unit be appropriate to insure employees the fullest freedom in exercising the rights guaranteed by the Act. ***Overnight Transportation Co.***, 322 NLRB 723 (1996), citing ***Morand Bros. Beverage Co.***, 91 NLRB 409, 418 (1950), enfd. 190 F.2d 576 (7<sup>th</sup> Cir. 1951). The unit being petitioned for is a relevant consideration, but it is not dispositive. ***Airco, Inc.***, 273 NLRB 348 (1984). Here, the Petitioner seeks a unit of employees at a single facility, instead of two facilities that are 20 miles away from each other as proposed by the Employer.

A single-facility unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. ***Catholic Healthcare West***, 344 NLRB No. 93, slip. op. at 1 (June 1, 2005); ***J&L Plate, Inc.***, 310 NLRB 429 (1993) ***Trane***, 339 NLRB 866 (2003); ***Budget Rent A Car Systems, Inc.***, 337 NLRB 884, 885 (2002). A party opposing the single-facility unit has a heavy burden of overcoming the presumption. ***Catholic Healthcare West***, supra. To determine whether the presumption has been rebutted, the Board considers such factors as centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; geographic proximity; and bargaining history, if any. ***New Britain Transportation Co.***, 330 NLRB 397 (1999); ***J&L Plate***, supra; ***Bowie Hall Trucking***, 290 NLRB 41 (1988); ***D&L Transportation, Inc.***, 324 NLRB 160 (1997); ***Esco Corp.***, 298 NLRB 837, 839 (1990). The Board considers the degree of interchange and separate supervision to be of particular importance in determining whether the single-facility presumption has been rebutted. ***Catholic Healthcare West***, supra, citing ***Passavant Retirement & Health Center***, 313 NLRB 1216, 1218 (1994). Moreover, “[t]he Board has frequently found single-facility units in hospitals and other health care settings to be appropriate.” ***Catholic Healthcare West***, supra, and cases cited.

In the instant case, the parent company, HCR, maintains uniform personnel policies, job applications, and benefits, and operates on a parallel management and supervisory structure. Thus, there are similarity of skills, functions, and working conditions for employees at the two facilities. Whitehall and Knollview also share the same regional management, cooperate with regard to recruiting residents and employees, and utilize the same vendors. However, centralized control of corporate operations does not necessarily render a single-facility unit inappropriate. ***Cargill, Inc.***, 336 NLRB 1114 (2001); ***The Concrete Company***, 336 NLRB 1311, 1315 (2001), citing ***Bowie Hall Trucking***, supra. Indeed, where the evidence demonstrates significant local autonomy over labor relations, central control is not enough to rebut the single-facility presumption.

*New Britain Transportation Co.*, supra; *Carter Hawley Hale Stores*, 273 NLRB 621, 623 (1984).

Whitehall and Knollview each have their own administrator. Whitehall managers and supervisors maintain significant local autonomy over the day-to-day operations of Whitehall. They hire, evaluate, discipline and terminate employees, and plan residents' activities with minimal oversight from regional management. The residents' food and medical supplies are ordered by Whitehall staff, and the Whitehall administrator is responsible for maintaining his own budget. Regional management is based far away from the facility. Thus, there is insufficient centralization of administrative functions and labor relations to negate a separate identity in light of the substantial local autonomy. See *Catholic Healthcare West*, supra, slip op. at 2, and cases cited.

In addition, the two facilities are approximately 20 miles apart. Moreover, the limited collective bargaining history indicates that only Whitehall has previously been organized by a union. Both of these factors further support a finding of the appropriateness of a single-facility unit. *Id.* (geographic separation)

The record does not establish that there is substantial contact and interchange between the petitioned-for employees and the employees at Knollview. Employees, for example, do not attend each other's Christmas parties or summer picnics, and there is no evidence of daily or even weekly contact between the employees at Whitehall and Knollview. There have been only two temporary transfers between the facilities involving employees in the proposed unit since 2004 and only two permanent transfers in the past seven years. As in *Catholic Healthcare West*, supra, the record indicates that employees are routinely assigned to work at either Whitehall or Knollview, and that temporary and permanent transfers are the "exception rather than the norm" and not sufficient to rebut the single-facility presumption.

Accordingly, I find that the Employer has not rebutted the presumption of the appropriateness of a single-facility unit at the Whitehall facility. The managers at Whitehall retain a significant degree of autonomy, the records shows limited permanent and temporary interchange of unit employees between the Whitehall and Knollview facilities, and there is insufficient evidence of functional integration between the two sites.

#### ***Assistant Food Service Director***

The primary supervisory indicia enumerated in Section 2(11) of the Act are read in the disjunctive, so that possession of any one of the 12 listed authorities can invest an individual with supervisory status. *Ohio Power Co. v. NLRB*, 176 F.2d 385, 387 (6<sup>th</sup> Cir. 1949), cert. denied 338 U.S. 899 (1949); *Allen Service Co.*, 314 NLRB 1060, 1061

(1994). The burden of proof rests with the party seeking to exclude the individual as a supervisor, in this case, the Employer. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001); *Benchmark Mechanical Contractors, Inc.*, 327 NLRB 829 (1999). The Board is mindful not to deprive employees of their rights under Section 7 by interpreting the term supervisor too broadly. *Azusu Ranch Market*, 321 NLRB 811, 812 (1996). To separate straw bosses from true supervisors, the Act prescribes that the exercise of supervisory indicia be in the interest of the employer and requires the use of independent judgment. Thus, "the exercise of some supervisory authority in a merely routine clerical, perfunctory or sporadic manner does not confer supervisory status on an employee." *Somerset Welding & Steel Inc.*, 291 NLRB 913 (1988), quoting *Feralloy West Co.*, 277 NLRB 1083, 1084 (1985).

Contending that the assistant food service director is a supervisor within the meaning of the Act, the Employer argues that she participates in the interviewing of candidates, responsibly assigns and directs work, performs employee evaluations, discusses and adjusts employee complaints, effectively recommends disciplinary action, and authorizes employee overtime and grants time off.

With respect to hiring, the evidence shows that Ogden participates in interviews of some employees. However, only Rademaker has the authority to hire. When an admitted supervisor also "participates in the interview process, it cannot be said that employees whose status is at issue have authority to effectively recommend hiring within the meaning of Sec. 2(11)." *Los Angeles Water & Power Employees' Association*, 340 NLRB 1232, 1234-1235 (2003), quoting *Ryder Truck Rental*, 326 NLRB 1386, 1387-1388 fn. 9 (1998).

Ogden discusses work assignments and makes suggestions to Rademaker with regard to the best employees to perform particular tasks. There is insufficient evidence to show that Ogden does any more than bring her ideas about work assignments to Rademaker; thus Ogden's actions are clearly circumscribed by Rademaker's authority. Assignment and direction of employees do not constitute supervisory authority when exercised in a routine manner or circumscribed by management directives or a collective bargaining agreement. *Dynamic Science, Inc.*, 334 NLRB 391 (2001); *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995).

With regard to reassigning tasks and providing direction to employees, Ogden's exercise of such authority appears to be routine and incidental to the food preparation process. She directs employees with regard to necessary menu substitutions, which is a task also performed by cooks, who are included in the proposed unit. Ogden has worked at the facility for 12 years and likely has more experience and skill than other employees. Giving minor orders during the course of a workday does not make an employee a supervisor. *Providence Hospital*, 320 NLRB 717, 725 (1996), citing *NLRB*

*v. Security Guard Service*, 384 F.2d 143, 151 (5<sup>th</sup> Cir. 1967); *Byers Engineering Corp.*, 324 NLRB 740, 741 (1997).

Regarding Ogden's ability to evaluate employees, Rademaker testified that Ogden has the authority to fill out performance appraisals for staff while she is on vacation, but not while Rademaker is present. However, Rademaker also testified that Ogden did not sign the evaluations of employees in the dietary department. Further, the record contains no examples of employees who have been evaluated by Ogden and it does not seem likely that the Employer would have Ogden evaluate an employee for an entire year's work when Rademaker is only gone for a short period of time. Rademaker's testimony is conclusory and unsupported by other evidence. "[C]onclusory statement made by witnesses in their testimony, without supporting evidence does not establish supervisory authority." *Sears, Roebuck & Co.*, 304 NLRB 193 (1991); *Control Services, Inc.*, 314 NLRB 421 (1994).

With respect to Ogden's ability to adjust grievances or complaints, Rademaker indicated that cooks and dietary aides might ask Ogden for advice about hours, schedules, and paychecks before the employees went to Rademaker. Again, the record contains no examples of specific adjustments made by Ogden. Providing advice to employees is quite different than adjusting grievances for employees. Moreover, it is Rademaker who schedules employees and HCR policy that sets the payrates for employees, based on evaluations signed by Rademaker. According to Rademaker, Ogden is little more than an accessible conduit for employees to relay concerns that they may have. Thus, there is insufficient evidence to demonstrate that Ogden's advice to employees rises to the level of adjusting grievances so as to render Ogden a supervisor.

While Ogden writes notes to Rademaker about incidents involving possible discipline, there is no evidence in the record that the notes actually contain recommendations for discipline. Others in the proposed unit, such as cooks, also leave such notes. The record contains no evidence of any disciplines signed by Ogden. "Whenever there is inconclusive or conflicting evidence on specific indicia of supervisory authority, the Board will find that supervisory status has not been established with respect to those criteria." *St. Barnabas Medical Center*, 343 NLRB No. 119, slip op. at 17 (Dec. 16, 2004). As there is conflicting evidence from its own witness, the Employer has not met its burden, especially since Rademaker testified that she did not always follow Ogden's suggestions.

With regard to assignment of overtime, the record is devoid of any specifics as to when Ogden assigned overtime, which employees were assigned overtime, and how many times Ogden has assigned overtime to employees. Moreover, Rademaker testified that there is very little overtime at the facility. The HCR handbook indicates that overtime cannot be required of employees. Thus, even if Ogden did request that employees work overtime, she could not require them to do so. Such limited authority is





## **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted under the direction and supervision of this office among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

### **GENERAL TEAMSTERS UNION LOCAL 406, INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

#### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile or E-mail transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **March 29, 2006**. No extension of time to file this list shall be granted except in extraordinary

circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **April 5, 2006**.

### **POSTING OF ELECTION NOTICES**

a. Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

a. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.

a. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. \*/

a. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

\*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

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